

Introduced by Senator Oropeza

February 2, 2010

An act to add Section 1748.33 to the Civil Code, relating to debit cards.

LEGISLATIVE COUNSEL'S DIGEST

SB 933, as introduced, Oropeza. Debit cards: service fees.

Existing law prohibits a retailer from imposing a surcharge on a credit card holder who elects to use a credit card instead of paying by cash, check or similar means, as provided. Existing law also provides that any retailer who imposes a surcharge and who fails to pay that amount to the cardholder within 30 days of written demand is liable for 3 times the amount at which actual damages are assessed. The cardholder is entitled to recover reasonable attorney's fees and costs incurred in the action. Existing law exempts from these provisions charges for payment made to an electrical, gas, or water corporation. Existing law also regulates the use of debit cards.

This bill would make these provisions applicable to a retailer in any sales, service, or lease transaction with a consumer who elects to use a debit card instead of paying by cash, check, or similar means.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1748.33 is added to the Civil Code, to
- 2 read:
- 3 1748.33. (a) No retailer in any sales, service, or lease
- 4 transaction with a consumer may impose a surcharge on a

1 cardholder who elects to use a debit card in lieu of payment by
2 cash, check, or similar means. A retailer may, however, offer
3 discounts for the purpose of inducing payment by cash, check, or
4 other means not involving the use of a debit card, provided that
5 the discount is offered to all prospective buyers.

6 (b) Any retailer who willfully violates this section by imposing
7 a surcharge on a cardholder who elects to use a debit card and who
8 fails to pay that amount to the cardholder within 30 days of a
9 written demand by the cardholder to the retailer by certified mail,
10 shall be liable to the cardholder for three times the amount at which
11 actual damages are assessed. The cardholder shall also be entitled
12 to recover reasonable attorney's fees and costs incurred in the
13 action.

14 A cause of action under this section may be brought in small
15 claims court, if it does not exceed the jurisdiction of that court, or
16 in any other appropriate court.

17 (c) A consumer shall not be deemed to have elected to use a
18 debit card in lieu of another means of payment for purposes of this
19 section in a transaction with a retailer if only debit cards are
20 accepted by that retailer in payment for an order made by a
21 consumer over a telephone, and only cash is accepted at a public
22 store or other facility of the same retailer.

23 (d) Charges for third-party debit card guarantee services, when
24 added to the price charged by the retailer if cash were to be paid,
25 shall be deemed surcharges for purposes of this section even if
26 they are payable directly to the third party or are charged
27 separately.

28 (e) It is the intent of the Legislature to promote the effective
29 operation of the free market and protect consumers from deceptive
30 price increases for goods and services by prohibiting debit card
31 surcharges and encouraging the availability of discounts by those
32 retailers who wish to offer a lower price for goods and services
33 purchased by some form of payment other than debit card.

34 (f) This section does not apply to charges for payment by credit
35 card or debit card that are made by an electrical, gas, or water
36 corporation and approved by the Public Utilities Commission
37 pursuant to Section 755 of the Public Utilities Code.